United States Court of Appeals for the Second Circuit



JOINT APPENDIX

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76-7401

United States Court of Appeals

FOR THE SECOND CIRCUIT

CANADIAN TRANSPORT COMPANY,

a Division of

MacMillan Bloedel (Alberni) Limited,

Plaintiff-Appellant,

-against-

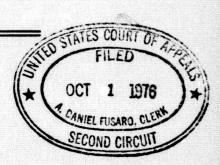
IRVING TRUST COMPANY,

Defendant-Appellee.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff-Appellant
Canadian Transport Company,
a division of MacMillan Bloedel
(Alberni) Limited
120 Broadway
New York, New York 10005



WINTHROP, STIMSON, PUTNAM & ROBERTS Attorneys for Defendant-Appellee Irving Trust Company 40 Wall Street New York, New York 10005

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANADIAN TRANSPORT COMPANY, a division of MacMILLAN BLOEDEL (ALBERNI) LIMITED,

: 76 Civ. 3544

Plaintiff,

RELEVANT DOCKET ENTRIES

- against -

IRVING TRUST COMPANY,

Defendant.

8-11-76	Filed Complaint and Issued Summons
8-12-76	Filed Plaintiff's Order to Show Cause for Preliminary Injunction, with Temporary Restraining Order to Enjoin Defendant from Honoring any Draft Drawn under Defendant's Letter of Credit No. 012556.
8-16-76	Piled Affidavit for Defendant in Opposition to Motion for Preliminary Injunction.
8-2>-76	Piled Order Denying Plaintiff's Motion for Preliminary Injunction with Memorandum Endorsed dated August 20, 1976 denying a Stay Pending Appeal.
8-20-76	Piled Plaintiff's Notice of Appeal.
8-23-76	Piled further Memorandum on Order denying Motion for Preliminary Injunction granking a Stay to August 23, 1976 Pending Appeal to the Court of Appeals.

U.ITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANADIAN TRANSPORT COMPANY, a division of MacMillan Bloedel (Alberni) Limited,:

Plaintiff.

- against -

COMPLAINT

IRVING TRUST COMPANY,

76 en 3544

Defendant. : Me

Plaintiff, by its attorneys, Kirlin, Ca. pell & Keating, complaining of the defendant, alleges on information and belief as follows:

- 1. Plaintiff, Canadian Transport Company, a division of MacMillan Bloedel (Alberni) Limited, is a Canadian corporation with its principal place of business at 1075 West Georgia Street, Vancouver, British Columbia, Canada, and is successor in interest to Canadian Transport Company Limited, a Canadian corporation.
- 2. Defendant, Irving Trust Company, ("Irving Trust") is a New York corporation with its principal place of business at One Wall Street, New York, New York 10005.
- 3. This court has jurisdiction of this action pursuant to 28 U.S.C. 1332 (a)(2) since the matter in controversy exceeds the sum of \$10,000 exclusive of interest and costs and is between a citizen of a state and a citizen of a foreign state.
- 4. On or about September 24, 1975, defendant, Irving
 Trust, issued Irrevocable Letter of Credit No. 012556 for the
 account of Saint Ioannis Shipping Limited, Monrovia, c/o Mariners Shipping Agency S. A., 53-55 Akti Misouli, Piraeus, Greece
 authorizing Lebanon Steel Mill Company, Tripoli, Lebanon ("Lebanon Steel") and/or Arab Bank, Ltd., Tripoli, Lebanon ("Arab
 Bank") to "draw on us at sight to the extent of 'Dollars 225,000.00'"
 upon presentation of certain documents. The Letter of Credit
 further provided for an expiration dated of September 24, 1976
 but that it would automatically be extended for additional periods

of one year from the present expiration date of September 24, 197t or any future expiration date thereof unless Irving Trust informed Lebanon Steel and/or Arab Bank via authenticated telex/cable or registered letter dispatched at least 30 days prior to the present or any future expiration date that Irving Trust elected not to extend it. In the event Irving Trust elected not to extend its Letter of Credit for an additional period until the final expiration date of September 24, 1978, Lebanon Steel and/or Arab Bank were authorized to draw under the Letter of Credit,

"by means of a draft on us at sight which must be presented to us before the then present expiration date of this Letter of Credit accompanied by your signed statement addressed to us as follows:

'We certify that the settlement of the damages we incurred has not been arrived at and this liability is still due to us. The proceeds of this draft will be retained and used by us to meet any payments which we may be toguired to make. In the event our liability is satisfied, we will refund to you the amount of this drawing less any amounts paid.'

5. On or about September 24, 1975, Canadian Imperial Bank of Commerce, ("Imperial Bank"), a Canadian corporation with an office and place of business at 640 W. Hastings Street, Vancouver, British Columbia, gave its Irrevocable Letter of Credit No. 9600/IMP/1510 to Irving Trust on behalf of and for the account of MacMillan Bloedel Limited. parent company if plaintiff in favor of Irving Trust to secure Irving Trust for any payment it may be called on to make under its Letter of Credit No. 012556 aforesaid for a sum not exceeding 225,000 U.S. dollars. Payment under Imperial Bank's Letter of Credit was conditioned upon presentation to Imperial Bank of an appropriately drawn sight draft accompanied by Irving Trust's signed statement reading: "The amount of our drawing represents the amount we have been called upon to pay to Arab Bank Limited, Tripoli, Labanon under our Letter of Credit No. 012556." Imperial Bank's Letter of Credit had an expiration dated of September 24, 1976 but provided that it would automatically be extended for additional periods of one year from

the present or any future expiration date unless Imperial Bank informed Irving Trust by authenticated telex/cable or registered letter dispatched at least 60 days prior to the present or any future expiration date that it elected not to extend it.

- 6. Imperial Bank issued its Letter of Credit No. 9500/
 IMP/1510 on behalf of MacMillan Bloedel Limited ("MacMillan")
 on the understanding that MacMillan would reimburse it in the amount of any sums paid out under the Letter of Credit.
- 7. MacMillan had an understanding with its subsidiary company, plaintiff herein, that plaintiff would reimburse Mac-Millan for any amounts MacMillan was required to pay Imperial Bank by reason of Imperial Bank having paid out under its Letter of Credit.
- 8. On or about July 20, 1976, plaintiff herein inadvertently instructed Imperial Bank to elect not to extend its Letter of Credit to Irving Trust beyond September 24, 1976, and Imperial Bank so informed Irving Trust.
- 9. On or about July 21, 1976, Irving Trust gave notice to the beneficiary of its Letter of Credit that it elected not to extend its Letter of Credit No. 012556 beyond September 24, 1976.
- 10. On or about July 28, 1976, plaintiff herein, upon realizing its error, instructed Imperial Bank to cancel its notice of refusal to extend its Letter of Credit previously given to Irving Trust and Imperial Bank informed Irving Trust that its said notice was cancelled and the automatic renewal provisions of Imperial Bank's Letter of Credit were reinstated.
- 11. On or about July 29, 1976, Irving Trust sent a further message to the beneficiary of its Letter of Credit cancelling its previous notice of refusal to extend its Letter of Credit thereby reinstating the automatic renewal provisions of its Letter of Credit.
- 12. On or about August 2, 1976, Irving Trust received a message from Arab Sank in Tripoli, Lebanon, saying that Lebanon

Steel wished to draw the full amount of the Letter of Credit and that a certificate signed by Lebanon Steel as specified in the Letter of Credit was being mailed to Irving Trust.

- 13. Irving Trust, having notified the beneficiary of its Letter of Credit that it cancelled its previous election not to extend its Letter of Credit, prior to being presented with a demand for payment or any documents as provided in said Letter of Credit, the beneficiary is not entitled to draw under the Letter of Credit and Irving Trust is accordingly not entitled to pay out under its Letter of Credit.
- 14. Nevertheless, Irving Trust has informed plaintiff that if Irving Trust receives a draft accompanied by a signed certificate as provided in the Letter of Credit drawing on Irving Trust for the full amount of the Letter of Credit, Irving Trust will honor the draft and then proceed to draw under its Letter of Credit with Imperial Bank as authorized therein.
- 15. In accordance with the terms of Imperial Bank's
 Letter of Credit, in the event Irving Trust presents Imperial Bank
 with an appropriately drawn draft accompanied by a signed statement as provided in Imperial Bank's Letter of Credit, that "the
 amount of our drawing represents the amount we have been called
 upon to pay to Arab Bank Limited, Tripoli under our Letter of Credit No. 012556", Imperial Bank will be required to honor said
 draft.
 - 16. Once Imperial Bank honors Irving Trust's draft, MacMillan will be required to reimburse Imperial Bank and plaintiff will be required to reimburse MacMillan.
- 17. This system of Letters of Credit was originally established to provide security for the eventual settlement of disputes or the outcome of litigation involving Ioannis Shipping as owner of the vessel PROSSO K, plaintiff herein, as time charterer of the vessel, and Lebanon Steel, as consignee of a cargo of steel carried by the vessel.
 - 18. Plaintiff fears that once Lebanon Steel draws the

\$225,000 under Irving Trust's Letter of Credit, it will not hold said sums in escrow pending the outcome of the litigation or settlement between the parties of the underlying disputes but instead Lebanon Steel will use them to satisfy its claims asserted against owners of the PROSSO K in the suit which it has brought against the Owners in the Lebanon courts and indeed may discontinue the suit. Furthermore, given the turbulent civil war now raging in Lebanon, plaintiff has no assurance that Lebanon Steel will continue to exist as a viable corporation or be able to hold or eventually to refund the Letter of Credit proceeds if it loses its suit in Lebanon or so much thereof as may exceed any recovery it may obtain in that suit if it should ever proceed to judgment. Accordingly, payment by Irving Trust of any draft presented to it under its Letter of Credit will result in immediate and irreparable injury, loss and damage to plaintiff.

WHEREFORE, plaintiff prays:

- 1. That the Court issue a temporary restraining order restraining the defendant Irving Trust from honoring any draft drawn under Irrevocable Letter of Credit No. 012556 predicated on an alleged election by Irving Trust not to extend this Letter of Credit beyond the present expiration date of September 24, 1976, pending the hearing upon the issuance of the preliminary injunction sought hereinafter in this complaint.
- 2. That the Court issue a preliminary injunction restraining the defendant from honoring any draft drawn under Irrevocable Letter of Credit No. 012556 predicated on an alleged election by Irving Trust not to extend this Letter of Credit beyond the present expiration date of September 24, 1976 pending the final hearing and determination of this cause.
- That this Court grant to plaintiff such other, further and different relief as may be deemed just and proper.

Dated: New York, New York August 11, 1976. KIFLIN, CAMPBELL & KEATING Attorneys for Plaintiff Canadian Transport Company

A Member of the Firm

Office & P. O. Address 120 Broadway New York, New York 10005 (212) 732-5520 STATE OF NEW YORK COUNTY OF NEW YORK)

WALTER P. HICKEY, being duly sworn, deposes and savs that: He is an attorney and a member of the firm of KIRLIN, CAMPBELL & KEATING, attorneys for plaintiff herein; he has read the foregoing complaint and knows the contents thereof, and that the ame is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

The reason this verification is made by deponent and not by plaintiff is that plaintiff is a Canadian corporation none of whose officers is now within this district.

The sources of deponent's information and the grounds for his belief as to those matters stated in the complaint to be alleged on information and belief are documents and records in his files and communications from plaintiff.

Sworn to before me this

11th day of August, 1976.

RARCLD V. HIGH WA

Notary Putilic, State of Flow York No. 31-1702005 Communion Express Sturen 20, 1977

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANADIAN TRANSPORT COMPANY, a division: of MacMILLAN BLOEDEL (ALBERNI) LIMITED,

76 Civ. 3544 Metzner, J.

Plaintiff,

ORDER TO SHOW CAUSE : POR PRELIMINARY INJUNCTION

AND TEMPORARY RESTRAINING ORDER

- against -

IRVING TRUST COMPANY,

Defendant.

Upon the annexed affidavit of Walter P. Hickey, sworn to on the 11th day of August, 1976, and upon the copy of complaint hereto @nmexed, it is hereby,

ORDERED, that the defendant, Irving Trust Company, show cause before this Court in Room 506, on the 17th day of August, 1976, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at the United States Court House, Foley Square, in the City and State of New York, why an order should not issued pursuant to Rule 65 F.R.C.P. for preliminary injunction; it is further

ORDERED that, upon the filing by the plaintiff of an undertaking or other security pursuant to Rule 65(c) F.R.C.P. which is hereby fixed in the sum of \$200.00 dollars conditioned that plaintiff will pay such costs and damages as may be incurred or suffered by the defendant if it is finally decided that the defendant has been wrongfully enjouned or restrained, and pending the argument upon the aforesaid motion and the disposition thereof by this Court, the defendant be and hereby is temporarily restrained from honoring any draft drawn under its Irrevocable Letter of Credit No. 012556 predicated on an alleged election by defendant not to extend the expiration date of the said Letter of Credit beyond the expiration date of September 24, 1976, and it is further

ORDERED, that personal service of a copy of this order to show cause, and a copy of the motion taken which the same

- 2 .

is granted, upon the defendant, Irving Trust Company at One Well Street, New York, New York, on or before the 12th day of August, 1976, by 5 p.m. shall be deemed good and sufficient service thereof.

Dated: New York, New York August 11, 1976.

ISSUED 1:45 P.M.

/s/ Gerard L. Goettel
United States District Judge
XPART I)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANADIAN TRANSPORT COMPANY, a division of MacMILLAN BLOEDEL

(ALBERNI) LIMITED,

A 11.

Plaintiff.

AFFIDAVIT

- against -

IRVING TRUST COMPANY,

Defendant.

CITY OF NEW YORK) COUNTY OF NEW YORK) ss.:

WALTER P. HICKEY, being duly sworn deposes and says:

I am an attorney at law and a partner in the firm of Kirlin, Campbell and Keating, attorneys for the plaintiff herein.

This affidavit is made in support of plaintiff's application for a temporary restraining order prohibiting the defendant from honoring any draft drawn under Irrevocable Letter of Credit No. 012556 given by Irving Trust Company in favor of Lebanon Steel Mill Company of Tripoli, Lebanon, on grounds that to do so will result in serious immediate and irreparable injury to plaintiff.

Plaintiff is a Canadian corporation with its principal office and place of business in Vancouver, Canada and is successor in interest to Canadian Transport Company Ltd., charterer of the Motorship FROSSO K owned by Saint Ioannis Shipping Limited, Monrovia, c/o Mariners Shipping Agency S.A., 53-55 Akti Misouli, Piraeus, Greece, from Lelakis Shipping Company as desponent owner by charter party dated November 19,1974 on a government form of charter approved by the New York Produce

Exchange for a term of 23 to 25 months at charterers. Applion. 2

The charter party permitted plaintiff to sub-charter the vessel, and it duly sub-time chartered her by charter party dated April 21, 1975 for a term specified therein to Himoff Maritime Enterprises Limited. Himoff in turn sub-chartered the vessel to Meth and Company to carry a cargo from Australia to Tripoli, Lebanon for delivery to the Lebanon Steel Mill Company which Meth had sold to the steel mill.

Thereafter sub-charterer, Himoff Maritime Enterprises, Ltd., became bankrupt. The FROSSO K carried the cargo to Tripoli and delivered it to the steel mill. The steel mill claimed that it had sustained heavy damages by reason of deviations from the voyage and failure to diligently prosecute the voyage and commenced a proceeding in the Lebanon courts to recover such damages in which it caused the FROSSO K to be arrested.

The owner of the vessel, Saint Ioannis Shipping Limited, and plaintiff agreed to certain arrangements for the release of the vessel from attachment. These arrangements were that Irving Trust Coromay would issue its Irrevocable Letter of Credit No. 012556 in favor of Lebanon Steel Mill Company, Tripoli, Lebanon and/or Arab Bank Limited, Tripoli, Lebanon, for the account of Saint Ioannis Shipping Limited, Monrovia and Canadian Imperial Bank of Commerce would issue its Irrevocable Letter of Credit No. 9600/IMP/1510 for account of plaintiff, in favor of Irving Trust Company in a sum not exceeding U.S. Dollars \$225,000 to secure any liability Irving Trust might incur under its Letter of Credit.

The Irving Trust Company letter of credit provided for payment on receipt of sight drafts accompanyed by proof of judgment in favor of Lebanon Steel Mill Company or an agreed settlement of the Lebanon Steel Mill Company's claims.

Both Irving Trust Company letter of credit and the Imperial Bank of Canada letter contained a so-called automatic extension clause providing that the credit shall automatically be extended for additional periods of one year from the yearly expiration date set forth in each letter unlass the beneficiary is informed prior to the expiration date that the bank elects not to extend it. The Irving letter provides:

"In the event we elect not to extend this credit for an additional period until the final expiration date of September 24, 1978, you may draw hereunder. Such drawing is made by means of draft on is at sight which must be presented to us before the then present expiration date of this letter of credit accompanied by your signed statement addressed to us reading as follows:

'We certify that the settlement of the damages we incurred has not been arrived at and this liability is still due to us. The proceeds of this draft will be retained and used by us to meet any payment which we may be required to make. In the event our liability is satisfied, we will refund to you the amount of this drawing less any amounts paid.'"

The Imperial Bank letter provides that it may be drawn against by sight draft accompanied by "the payee's signed statement reading as follows: The amount of our drawing represents the amount we have been called upon to pay Arab Bank Company, Tripoli, Lebanon under our Letter of Credit No. 012556."

On July 20, 1976, after these letters of credit had been issued and the vessel released, plaintiff as a result of a misunderstanding with respect to the contents of the letters of credit issued instructions to the Imperial Bank not to extend its letter of credit beyond Septertal 1, 1976, the unextended expiration date. The Imperial 1 wised Irving Trust of the exercise of its option not to extend beyond September 24, 1976.

On July 21 Irving Trust wired a branch or affiliate of the Arab Bank of Tripoli in Ammen to advise the latter that Irving elected not to extend its letter of credit beyond September 24, 1976.

On July 28 plaintiff realized that its instructions to the Imperial Bank had been issued as a result of a mistake and, at plaintiff's request, Imperial Bank notified Irving Trust Company that it with rew as notice given on July 20 that the Imperial Bank's letter of credit would not be extended beyond September 24, 1976.

On July 28 after receipt of the Imperior Bank's cancellation of its previous notice, Irving Trust Company sent a message cancelling its July 21 notice that its letter of credit would not be extended. The result of these cancellations was that the automatic extension provisions of both letters of credit were re-instated. Consequently, the beneficiaries of the letters of credit were not entitled to draw upon either bank by reason of any refusal to extend the expiration dates.

On August 2 Irwing Trust Company, received a message from the Arab Bank of Tripoli stating that receivers (Lebanon Steel Mill) wish to draw the full amount of Irving's letter.

4

of credit for \$225,000 and that a signed certificate by receivers in accordance with the letter of credit was being posted to Irving Trust. The same day Irving Trust replied calling attention to its message of July 29 cancelling its previous notice of election not to extend.

I was informed yesterday morning by Mr. D'Andrea of the Irving Trust Bank that up to that time no reply to that communication had been received nor had the bank received the sight draft and certificate referred to in the Arab Bank's communication of August 2. He advised, however, that if such draft and certificate were received in proper form the Bank would feel compelled to honor the draft despite its cancellation of its notice of non-extension.

On August 3 plaintiff received advices from

Australia that the shippers of the cargo consigned to Lebanon

Steel Mill had been required to pay a "vast amount of interest
owing to the extreme late arrival of the goods in question."

The plaintiff is seeking clarification of this information and
believes that the damages which the steel mill seeks to
recover in the Lebanese action against the vessel owner consists
at least in large measure of the sums recovered from the
seller and that the steel mill is no longer entitled to collect
said damages, if it ever had a cause of action therefor against
the defendant in the Lebanese suit.

Plaintiff will suffer irreparable damage if the Irving Trust Company should pay the draft of the Lebanon Steel Mill when received despite the fact that no refusal to extend the letter of credit now exists.

The Irving Trust letter of credit was intended as security for any judgment recovered by the steel mill in

which it has not yet proved, it will have no incentive to continue the suit in Lebanon to judgment, Plaintiff would then be in an almost impossible procedural position for it would have to establish that the steel mill had no right to the damages it claims. For this place of an early an order

hostilities in Lebanon are well known and may be judicially noticed. There can be assurrance that the Lebanon Steel Mill will survive or be able to account for the funds it receives nor that litigation in the Lebanon courts is or will remain feasible in view of present conditions to enable plaintiff to obtain a judicial determination of the claims of the steel mill. Therefore, payment to the steel mill by Irving Trust at this time, predicated on the cancelled notice of refusal to extend the letter of credit, would in all probability be irretrievable as a practical matter and would result in irreparable damage to plaintiff.

It is submitted, therefore, that Irving Trust should be restained temporarily from paying any draft under its letter of credit predicated on its notice of non-extension which has been withdrawn, thus reinstating the automatic extension provisions of the letter of credit, until a hearing can be hed for a preliminary injunction.

No previous application for this relief has been sought in this or any other court.

The facts and information which I have recited above have been obtained by me in telephone conferences with general corporate counsel to plaintiff, from telex messages received from him, from documentary evidence in my possession and a telephone conversation yesterday with Mr. D'Andrea, of Irving

Trust Company.

Pursuant to the requirements of Rule 65(b) F.R.C.P.

I spoke by telephone yesterday with Mr. D'Andrea, Manager of the Import Issuing Letters of Credit Department of Irving Trust Company, indicating plaintiff was contemplating legal steps to protect itself. This morning at about 10:a.m. I again telephoned Mr. D'Andrea and notified him that plaintiff was filing suit in this Court for an injunction against the Bank and later in the day would apply to the Court for a temporary restraining order. I suggested he might so inform the Bank's law department.

WATER P. HICKEY

Sworn to before me this lith day of August, 1976.

Notary Public

Notes Public. State of New York

Qualified in Westchester County
Corridore File4 in New York County

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MacMILLAN BLOEDEL (ALBERNI) LIMITED,

Plaintiff,

76 Civ. 3544 (CMM)

- against -

AFFIDAVIT

:

IRVING TRUST COMPANY,

Defendant.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

VITO A. D'ANDREA, being duly sworn, deposes and says:

- I am the Manager of the Issuing Section of the Letter of Credit Group of Irving Trust Company, defendant herein.
- 2. I am familiar with the circumstances of the issuance by Irving Trust Company of its letter of credit number 012556, the payment of drafts under which by Irving Trust Company the plaintiff seeks to enjoin.
- 3. Irving Trust Company was requested by Mariner Shipping Agency of Piraeus, Greece, to issue an irrevocable letter of credit for the account of Saint Ioannis Shipping Limited in favor of Lebanon Steel Mill Company of Tripoli,

Lebanon, in the amount of \$225,000 and to advise Lebanon Steel Mill Company of the Issuance of that credit through Arab Bank Limited in Tripoli.

In pursuance of that request from its customer,

Irving Trust Company, on September 26, 1975, advised Arab

Bank Limited by cable of the opening of its irrevocable credit

\$012556 in favor of Lebanon Steel Mill Company, under which

Irving Trust undertook to pay sight and drafts drawn on it, Sound b

to be accompanied by a declaration issued by a Lebanese

court concerning its judgment in the case of damages alleged

to have been incurred by Lebanon Steel Mill Company by reason

of alleged delay in the arrival of a steamship or, alternatively, a settlement agreement signed by Lebanon Steel Mill

Company and Savon & Company Limited, the latter as agent for

Saint Ioannis Shipping Limited.

- 4. A copy of said cablegram is annexed hereto and marked Exhibit A.
- 5. Subsequently and on September 29, 1975, Arab
 Bank Limited advised Irving Trust Company that Lebanon Steel
 Mill Company wished the credit to be amended so that it
 should be confirmed by Arab Bank Limited.
- 6. Irving Trust Company took up the requested amendment with its customer and confirmed the requested amendment by cable to Arab Bank Limited dated September 30, 1975, a copy of which is annexed hereto and marked Exhibit B.

- 7. On September 30, 1975, 1rving Trust Company issued its confirmation of its irrevocable and confirmed credit, a copy of which is annexed hereto and marked Exhibit C.
- 8. The letter of credit, in addition to providing the alternative documents which must accompany drafts drawn thereunder, provided that it would expire on September 24, 1976, except that it should be automatically extended for additional periods of one year from the expiration date set forth therein (September 24, 1976) and for one year from any future expiration date unless Irving Trust Company informed Lebanon Steel Mill Company by cable or registered letter sent at least thirty (30) days prior to the pres it expiration date (September 24, 1976) or any future expiration date, that Irving Trust Company elected not to extend the credit. There was the further provision that the credit should not be extended beyond September 24, 1978 in any event.
- 9. Irving Trust Company was secured for any payments that it might make under its letter of credit by the issuance in its favor by the Canadian Imperial Bank of Commerce in Vancouver, B.C. of a letter of credit under which Irving Trust Company was authorized to draw on that Bank for the amount of any payments it might make to Lebanon Steel Mill Company. The letter of credit of which Irving

Trust Company was the beneficiary, contained provisions
that it could be extended for additional periods
unless Irving Trust Company was notified sixty (60)
days prior to any then existing expiration date of its nonextension by Canadian Imperial Bank of Commerce.

- 10. On July 21, 1976, Canadian Imperial Bank of Commerce telegraphed Irving Trust Company that it had been instructed by its customer (the plaintiff) not to extend the expiration date of Canadian Imperial Bank of Commerce's letter of credit in favor of Irving Trust Company beyond September 24, 1976.
- 11. Irving Trust Company thereupon cabled Arab

 Bank Limited that it would not extend its credit #012556 in

 favor of Lebanon Steel Mill Company beyond September 24, 1976.
- 12. Copies of said advices are annexed hereto and markedibits D and E, respectively.
- Company was informed by telephone by Canadian Imperial Bank of Commerce that its customer, the plaintiff herein, had given it erroneous instructions not to extend the expiration date of the letter of credit of which Irving Trust Company was the beneficiary beyond September 24, 1976 and that Irving Trust Company should advise Lebanon Steel Mill Company that it (Irving Trust Company) was withdrawing its earlier advice that it would not extend its letter of credit in favor of

Lebanon Steel Mill Company beyond September 24, 1976.

on July 29, Irving Trust Company cabled Arab Bank Limited to alvise Lebanon Steel Mill Company that it was voiding its cable of July 21, 1976 advising that its letter of credit would expire on September 24, 1976 and that it would extend the letter of credit to September 24, 1977, and that all other tems and conditions remained unchanged. A copy of said cable advice is annexed hereto and marked Exhibit F.

15. On August 2, 1976, Irving Trust Company received a cable sent from abroad on July 29, 1976 from Arab Bank Limited referring to Irving Trust Company's cable of July 21, 1976, which notified it of Irving's election not to extend its letter of credit beyond September 24, 1976, Arab Bank advised that since Irving Trust Company elected not to extend, the beneficiary was drawing a draft in the amount of the letter of credit, which would be accompanied by a signed statement as required by the terms of the credit. This is in accordance with the terms of the letter of credit which provided that in the event Irving Trust elected not to extend it for any additional period until the final expiration date of September 24, 1978, Lebanon Steel Mill could draw under it by sight draft presented before the expiration date (September 24, 1976) accompanied by the following signed statement:

'We certify that the settlement of the damages we incurred has not been arrived at and this liability is still due to us. The proceeds of this draft will be retained and used by us to meet any payment which we may be required to make. In the event our liability is satisfied, we will refund to you the amount of this drawing less any amounts paid.'

- 16. That cable was sent on July 29, 1976 and apparently before Arab Bank Limited had received Irving Trust Company's cable of the same date.
- 17. As matters now stand, it appears that
 Irving Trust Company was drawn upon by the beneficiary of
 its credit on July 29, 1976. Although the draft and its
 accompanying documents has not yet been received in New
 York and presented to Irving Trust Company for payment,
 under the terms of its leter of credit, Irving Trust
 Company is absolutely committed to pay the draft if the
 accompanying document conforms to the credit terms.

Furthermore, in all likelihood, Lebanon Steel
Mill Company has received payment from Arab Bank Limited
by presenting the draft to that Bank. When Arab Bank
Limited confirmed the credit, as confirming Bank it is
absolutely liable. Since Arab Bank Limited confirmed a
credit at Irving's request, Irving is liable to Arab Pank
Limited if it paid the drafts.

Thus, Irving Trust has a liability under its letter of credit whether the drafts are paid by Arab Bank Limited as confirming Bank, or whether they will be received from Lebrary Steel Mill Company, itself. This latter possibility is highly unlikely since Lebanon Steel Mill Company could get its money immediately upon presentation of the draft and documents to Arab Bank Limited as confirming Bank.

However that may be, Irving Trust Company is liable to either Lebanon Steel Mill Company as beneficiary or t Arab Bank Limited.

- 18. It is suggested in the moving papers that the withdrawal of the notification by Irving Trust Company of its earlier election not to extend beyond September 24, 1976 constitutes an amendment of the credit terms and that under the letter of credit as amended, no payment is presently Cie.
- of a letter of credit cannot be made unilaterally by either the bank which opens the letter of credit or the customer at whose request the letter of credit was opened. A consent of the beneficiary of the credit, in this case Lebanon Steel Mill Company, is required to make the alteration effective. No such consent has been given.
- 20. The Uniform Customs and Practices in Documentary SVAD

 Brockure

 Credits (International Chamber of Commerce Publication No. 222)-5/VA-1

 under which the Irving Trust Company letter of credit was

 opened and was effective at that time, provides in Article 3

 that:

"An irrevocable credit may be advised to a beneficiary through another bank without engagement on the part of that other bank (the advising bank), but when an issuing bank authorizes another bank to confirm its irrevocable credit and the latter does so such confirmation constitutes a definite undertaking on the part of the confirming bank either that the provisions for payment or acceptance will be duly fulfilled or in the case of a credit available by negotiation of drafts, that the confirming bank will negotiate drafts without recourse to the drawer."

- Lebanon Steel Mill Company that it would not extend the credit beyond September 24, 1976, the effect was to give Lebanon Steel Mill Company an absolute right to draw under the terms of the credit. The withdrawal of the notification of non-renewal beyond September 24, 1976 by Irving Trust Company would, in the plaintiff's view, take away the right of Lebanon Steel Mill Company to draw under the terms of the credit. This is a radical change or alteration of the terms of the letter of credit and requires the consent of the beneficiar; Lebanon Steel Mill Company to be effective.
- 22. Also by this action seeking to enjoin Irving Trust Company from making payments under the terms of its irrevocable credit, plaintiff is attempting to effect the

rights of the beneficiary and Arab Bank Limited although they are not parties and therefore unable to assert their rights under the letter of credit.

23. Deponent therefor respectfully requests that the motion for a temporary injunction be denied.

S/Vito A. andrea

Sworn to before me this /6 th day of August, 1976.

Notary Public

Motory Public, State of from Fork No 31-5594664 Position in New York Church Commission Expires March 30, 1477

PILITED, CETERS	. <u> </u>	COMMITTED ACCOUNTS BULLED CUSTOMFR. BUT MAYE DETRICTED COM- CABLE FROM MISCLESS OF	RTMENT_P/25/11	975 <u>`</u> on
L/C 012555 FOR MESSAGE TO	*	72-013-134		
APAN A BANK LAD.	,	x		
TELEX NUMBER	J	ader	9/26/75	
BEST COPY AVAILABLE		1 8		· •

ADVISE LEBANON STEEL MILL CO TRIPOLI, LEBANON WE HAVE ISSUED IRREVOCABLE CREDIT 012556 THEIR FAV ACCOUNT SAINT IOANNIS SHIPPING LIMITED, MONROVIA \$225,000.00 AVAILABLE /SIGHT DRAFTS ON US TOGETHER WITH A DECLARATION TO BE ISSUED BY THE COURT IN LEBANON CONCERNING ITS JUDGMENT IN THE CASE OF THE DAM ALLEGED BY THE RECEIVERS TO HAVE BEEN INCURRED IN THE ALLEGED DELAY IN THE ARRIVAL OF THE SHIP PROSSO K. WITH AN ENGLISH LANGUAGE TRANSLATION, SUCH TRANSLATION MUST BE CERTIFIED TRUE AND CORRECT AND THIS CERTIFICATION MUST BE NOTARIZED STOP OR A SETTLEMENT AGREEMENT SIGNED BY YOURSELVES AND SAVON & COMPANY: LIMITED, P.O. BOX 3056, BEIRUT, LEBAMON ACTING AS AGENTS FOR THE ACCOUNTEE AGREEING TO SETTLEMENT WHICH WILL BE DULY MOTARIZED STOP IT IS A CONDITION OF THIS CREDIT THAT IT SHALL AUTOMATICALLY BE EXTENDED FOR ADDITIONAL PERIODS OF ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF UNLESS ME INFORM YOU VIA AUTHENTICATED TELEX/CABLE OR REGISTERED LETTER DISPATCHED BY US AT LEAST 30 DAYS PRIOR TO THE PRESENT OR ANY FUTURE EXPIRATION DATE THAT WE ELECT NOT TO EXTEND IT IN THE EVENT WE ELECT NOT TO EXTEND THIS CREDIT FOR AN ADDITIONAL PERIOD YOU MAY

(CONTINUED ON PAGE TWO)

IRVING TRUST COMPANY LONG BY BY SOME OF TELEGRAM PROCESSAGE AS PROCESSAG

ORIGINATING DEPARTMENTS COPY

	MARITIMES SHIPPING ASERC! S.A. 53-55 ATTL HEADULE PIRATUS, CITERES	USE VALUE OF THE PARTY OF THE COME OF THE
L/G (123)	56FOR MESSAGE TO	- AS 0 72-012-131
	APAS EAR LTD. TRIPIGI, LESANON	
Ļ		

DRAW HEREUNDER SUCH DRAWING IS TO BE MADE BY MEANS OF A DRAFT ON US AT SIGHT WHICH MUST BE PRESENTED TO US BEFORE THE THEN PRESENT EXPIRATION DATE OF THIS LETTER OF CREDIT ACCOMPANIED BY YOUR SIGNED STATEMENT ADDRESSED TO US READING AS FOLLOWS QUOTE WE CERTIFY THAT THE SETTLEMENT OF THE DAMAGES WE INCURRED HAS NOT BEEN ARRIVED AT AND THIS LIABILITY IS STILL DUE TO US THE PROCEEDS OF THIS DRAFT WILL BE RETAINED AND USED BY US TO MEET ANY PAYMENTS WHICH WE MAY BE REQUIRED TO MAKE IN THE EVENT OUR LIABILITY IS SATISFIED. WE WILL REPUND: TO YOU THE AMOUNT OF THIS DRAWING LESS ANY AMOUNT PAID, UNQUOTE DRAFTS MUST CLEARLY SPECIFY THE NUMBER OF THIS CREDIT AND BE NEGOTIATED SOLELY THROUGH ARAB BANK LIMITED, TRIPOLI LEBANON NOT LATER THAN SETPEMBER 24, 1976 SUBJECT UNIFORM CUSTOMS.

OR TO PALE

LIEVING TIEL'ST COMPANY

CABLE & TELEGRAY MINICESSING
AN RETOR STREET
NEW YEAR, N.Y. 19004

275/00 (8-75)

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TRVING TRUST COMP NY MO CIRCULATION COPY

OUR REFERENCE NO.

SEPTEMBER 30, 1975

E REASED TO ATTACH.	certawar 30, 1915
THE ORIGINAL AND A COPY OF THIS CREDITIAN AMENDMENT THE COPY I'VE YOUR RECORDS.	TO THIS CREDIT. PLEASE FORWARD THE ORIGINAL TO THE
THE OPIGINAL AND A COPY OF THE CREDIT ADVISED TO YOU IN NEGO : ATIONS WHICH YOU MAY HAVE MADE, PLEASE DELIVER THE COPY FOR YOUR RECORDS.	OUR CABLE OF TODAY. AFTER ENDORSING THEREOF ANY BE GRIGINAL CREDIT TO THE BENEFICIARY AND RETAIN THE
A COPY OF AN AMENDMENT TO THIS CREDIT FOR YOUR RECORDS.	THE ORIGINAL AMENDMENT IS BEING SENT DIRECTLY TO
THE ORIGINAL AND A COPY OF A PRELIMINARY ADVICE. PLEASE F	ORWARD THE CEIGINAL TO THE BENEFICIARY AND RITAIN

NO ACANOWIFDGMENT IS NECESSARY.

PLEASE ADD YOUR CONFIRMATION TO THIS INSTRUMENT INACCORDANCE WITH OUR CABLES OF SEPTEMBER 26, 29, and 30

ARAB BANK LINXVID TRUPOLI, LEBAKON

IRVING TRUST COMPANY

	****	rotes		DEPARTA:ENT	<u>•</u> o.
j	LEAS BANK LIMITED P.O. BOX 1015 MIRUT LERMION L/C TELPOLI			RGEU ACC. JAT. CD CUSTOMFR MAYE DEDUCTEN COST OF THIS, LE FROM PHOCKEDS OF PAYMENT	
L/C 012570		OR MESSAGE TO	700		
(3)	ARAD BANZ LIMITED F	on Kall	ONOUT	forters, Sp	·
		YELEN NUMB		10 par 68	
				Ammien ch	erden

CHE FLEASE ADD TOUR CONFERMATION TO OUR CREDIT 012556. TWO: STICE WE REQUESTED TOU TO ANYLOW DUTAILS THIS TRANSACTION TO BENEFICIARY OF CREDIT THE RELIEF SETTLEMENT AGREEMENT MUST BE SHOULD JOURNAL BY L. SAVON AND LEBERON STILL HILL AND HOT BY ARAD BANK TRIPOLI. THERE: THE CONTEST VALIDITY FOR PRESENTATION DOCUMENTS IS SUPTEMBER 24, 1975 TOSTTHER WITH THE AUTOMATIC ENTERSION CLAUSE AUTHORIZING RESENAL, OF THIS CREDIT HUMBEVER THIS CREDIT SHALL NOT BE EXTENDED BETOND

LIC DEPRINGEN V. N. DINDREN SEP 30 1915

IRVING TRUST COMPANY

EXHIBIT B"

275/00 (8 75)

ORIGINATING DEPARTMENTS OF

Lobenon Steel Mill Conpany Tripoli, Lobenon

This confirms our cable of September 26, 29 and 30, 1975 Date September 30, 1975

Irrevecable Credit No. 012556

Contlemen:

For the account of Saint Incemie Shipping Limited, Henrovia, e/o Marinero Shipping Agency S.A., 53-55 Arti Miccali, Piracus, Greece, we hereby authorize you to draw on us at sight to the extent of **\$\$25,000.00**. Your drafts must be accompanied by the following:

A declaration to be issued by the Court in Lebeness concerning its judgment in the case of the damages alleged by the receivers to have been insurred in the alleged delay in the arrival by the skip Proces E., with an English Language trunslation. Such trunslation must be certified true and correct and this certification must be notarised.

0

A softlement agreement signed by yourselves and L. Seven & Company Limited, P.O. Box 7856, Smiret, Lebensen acting as agents for the accountse agreeing to a softlement, which will be duly notarised.

It is a condition of this credit that it shall suterntically be extended for additional periods of one year from the present or any feture expiration date hereof unless we inform you vis authenticated telex/cable or registered letter dispatched by us at least 30 days prior to the present or any future expiration date that we elect not to extend it. However this credit shall not be extended beyond September 24, 1978.

In the event we elect not to extend this credit for an additional period until the final expiration date of September 24, 1978, you may draw hereunder. Such drawing is to be made by means of a Caft on us at sight which must be presented to us before the than present expiration date of this letter of credit accompanied by your signed statement addressed to us reading as follows:

"We cortify that the cottlement of the damages we insurred has not been arrived at and this liability is still one to us. The proceeds of this draft will be retained and used by us to meet any payments which we may be required to make. In the event our liability is extisfied, we will refund to you the amount of this drawing less any amounts paid."

Drafts must clearly specify the number of this credit, and be presented to Arab Bank Limited, Tripoli, Lebenen, not later than September 24, 1976.

This credit is subject to the Uniform Costons and Practice for Documentary Credits (1962 Revision), International Counter of Commerce Breekure No. 222.

We engage with you that drafts drawn under and in compliance with the terms of this credit will be duly henced.

Yours very truly

Anthorised Signature

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EXHIBIT "C"

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B	CANBARK & WEST	: ا
AII.	16 V 2 lec 2010	8
	226677.	CHUSSE
	CREDIT 2600 IMP/1510 USDLRS 225,000.00 ACCOUNT MACMILLAN BLOSDEL LTD	D LING T
AE	PARENT CO OF CANADIAN TRANSPURT CO LTD AS INSTRUCTED BY THE ACCOUNTE	S Dich
	PLEASE DO NOT REPEAT NOT EXTEND EXPLAY DATE OF SUBJECT CREUIT	ACHTE P
	PLEASE DO NOT REPEAT NOT EXTEND EXPLAY DATE OF SUBJECT CREUIT THE BEYOND SEPT 24/76	OUT.
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<u> </u>	VI. /W 1-11	(
4.5	EXHIBIT D	

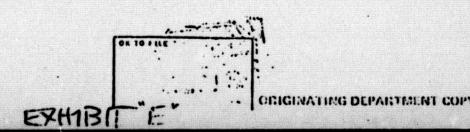
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ľ	TA14 L/C 012556	L/C ISSUIT 462	7/21/76
	RESERVES FOR EXPENSES CURRENT CAULE NARINE TRANSPORT BEPT. 145	CHARGED ACCOUNT GILLED CUSTOMER ACCOUNT SUMSER	We have dividend the cost of this catale from the proceeds of payment.
ſ	- ARAD DAKK LTD.	TELES NUMBER	
*** 1	AISTAN JORDAN		

PLEASE CONVEY FOLLOWING MESSAGE TO RESPONSIBLE AREA NOW
HANDLING BUSINESS YOUR TRIPCLI LEDANON OFFICE READING QUOTE
REFER OUT L/C C12556 FOR \$225,000.00 S OF SEPTEMBER 30 1975
WHICH WE REQUESTED YOU TO ADVISE TO LEDANON STEEL MILL
COMPANY TRIPCLI LEDANON WHICH CONTAINED AUTOMATIC EXTENSION
CLAUSE STOP IN ACCORDANCE WITH TERMS AND CONDITIONS LETTER OF
CREDIT NUMBER 012556 WE ELECT NOT TO EXTEND THIS CREDIT
BEYOND SEPTEMBER 24 1976 AND CONSIDER THIS EXPIRY DATE AS
TERRINATION OF OUR LIABILITY FULLSTOP

BEST COPY AVAILABLE

ecb Dango

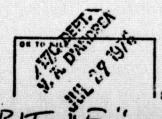


BATH L/C D12	255%	LA ESCUENC NO	A 34
CAMADIAN INF TORONTO CAM A/C YOUR YAN		SILLED CUSTOMER ACCOUNT NUMBER 03-301-070	We have deducted the child from the proof payment.

PLEASE CONVEY FOLLOWING TO RESPONSIBLE AREA NOW HM-ANDLING
BUSINESS YOUR TRIPOLI LEGANON OFFICE RA-EADING QUOTE REFER OUR
L/C 072556 AND CUR CACLE JULY 21 FOR \$225,000.00 FAVOR LEGANON
STEEL FILL STOP OUR CREDIT AMENDED DRAFTS MUST NOW BE
PRESENTED TO AS NOT LATER THAN SEPTEMBER 24 1976++--PRESENTED TO AS NOT LATER THAN SEPTEMBER 24 1977 STOP
ACCORDINGLY PLEASE VOID OUR RESSAGE OF JULY 21 1976 ADVISING
EXPINY DATE OUR CREDIT SEPTEMBER 24 1976 AND ALL TERMS
AND CONDITIONS UNCHANGED UNQUOTE FULLSTOP

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Gep Der Gry



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CANADIAN SPANSPORT COMPANY, a division of Machillan Bloedel (Alberni) Limited,

- against -

76 CIV. 3544

Plaintiff,

ORDER

INVING TRUST COMPANY,

Defendant.

The plaintiff above med, having moved this Court for a temporary injunction restraining the defendant from honoring any draft drawn under its Irrevocable Letter of Credit No. 012556,

NOW, upon reading and filing the order to show cause herein dated August 11, 1976, and the affidevit of Walter P. Hickey, sworn to the 11th day of August, 1976, in support of said motion, and the affidavit of Vito A. D'Andrea, sworn to the 16th day of August, 1976, in opposition thereto, and after hearing Jacques L. Jones, Esq. in support of said motion and Walter J. Holska, Esq. in opposition thereto, and due deliberation having been had, it is

ORDERED, that the said motion of the plaintiff for a temporary injunction enjoining and restraining the defendant from honoring any draft drawn under its Irrevocable Letter of Credit No. 012556 be and the same hereby is in all respects denied.

Dated: New York, M.Y. August 20, 1976

U. S. D. J. (Part-One)

A stay pending appeal is denied since it would in effect accomplish for plaintiff what was sought in the original motion.

8/20/76

/s/ Henry F. Werker U.S.D.J.

A stay pending appeal to the Court of Appeals on August 23, 1976 is granted.

August 20, 1976

/s/ Henry P. Werker U.S.D.J.

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76 Civ. .3544 (HFW)

CANADIAN TRANSPORT COMPANY, a divi- : sion of MacMILLAN BLOEDEL (ALBERNI) LIMITED. :

Plaintiff,

against

NOTICE OF APPEAL

:

IRVING TRUST COMPANY,

Defendant.

SIRS:

PLEASE TAKE NOTICE that plaintiff Canadian Transport Company, a division of MacMillan Bloedel (Alberni) Limited, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the United States District Court for the Southern District of New York entered herein on August 20, 1976, denying plaintiff's motion for a preliminary injunction restraining defendant Irving Trust Company from honoring any draft drawn under its irrevocable letter of credit No. 1012556.

Dated: New York, New York August 20, 1976

Yours, etc.,

KIRLIN, CAMPBELL & KEATING

BY: /s/ David A. Nourse

A Member of the Firm
Attorneys for Plaintiff
120 Broadway
New York, New York 10005

TO: WINTHROP, STIMSON, PUTNAM & ROBERTS
Attorneys for Defendant
40 Wall Street
New York, New York 10005

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CANADIAN TRANSPORT COMPANY, a Division of MacMillan Bloedel (Alberni) LIMITED,

Plaintiff-Appellant,

CERTIFICATE OF SERVICE
OF APPENDIX

-against-

IRVING TRUST COMPANY,

Defendant-Appellee.

WE HEREBY CERTIFY that one copy of the attached appendix was this date served on the following:

WINTHROP, STIMSON, PUTNAM & ROBERTS Attorneys for Defendant-Appellee Irving Trust Company 40 Wall Street New York, NY 10005

Dated: New York, New York

October 1, 1976

KIRLIN, CAMPBELL & KEATING

By Charles h. Fredde

Attorneys for Plaintiff-Appellant 120 Broadway New York, NY 10005

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